NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	No. 05-35759
Plaintiff - Appellee,	D.C. Nos. CV-04-00162-JWS/JDR
v.	CR-00-00165-JWS/JDR
CHENG KOY SAECHAO,	**MEMORANDUM** [*]
Defendant - Appellant.	

Appeal from the United States District Court
for the District of Alaska
John W. Sedwick, District Judge, Presiding

Submitted July 21, 2006 [**]
Anchorage, Alaska

Before: **KOZINSKI**, **BERZON** and **TALLMAN**, Circuit Judges.

Petitioner challenges the constitutionality of his 2002 conviction under

United States v. Booker, 543 U.S. 220 (2005). As petitioner acknowledges, we

have held that Booker does not apply retroactively on collateral review. See

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[*]   This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[**]   This panel unanimously finds this case suitable for decision without
oral argument. See Fed. R. App. P. 34(a)(2).

United States v. Cruz, 423 F.3d 1119, 1119 (9th Cir. 2005) (per curiam). Even if

Booker were to apply retroactively, however, petitioner's sentence would not be

affected because he waived his right to a jury trial, the judge considered and ruled

on each sentencing factor raised, and his sentence was not above the statutory

maximum. See Booker, 543 U.S. at 231–32.

Petitioner's claim that the district court lacked jurisdiction to sentence

during the pre-Booker guidelines era is also meritless. Congress had granted

district courts jurisdiction to impose criminal penalties before Booker. See 18

U.S.C. § 3231. While Booker severed and excised 18 U.S.C. §§ 3553(b)(1) and

3742(e)—thus making the guidelines advisory—it did not sever the jurisdictional

part of the statute. See Booker, 543 U.S. at 245. Thus, Booker may have affected

the district court's discretion to sentence petitioner, but it didn't affect its

jurisdiction.

PETITION DENIED.